

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LEONARD R. WOODS,

Plaintiff(s),
Defendant(s).)

Case No. 2:17-cv-01607-JCM-NJK
REPORT AND RECOMMENDATION

V.
PHILIP J. KOHN et al.

Defendant(s).)
)

On July 26, 2017, the Court ordered Plaintiff to file a partial filing fee. Docket No. 4. Having now received that partial filing fee, Docket No. 6, the Court will screen Plaintiff's complaint pursuant to 28 U.S.C. § 1915. For the reasons discussed more fully below, the undersigned **RECOMMENDS** that this case be **DISMISSED** without prejudice to Plaintiff seeking relief in state court.

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). A properly

1 pled complaint must provide a short and plain statement of the claim showing that the pleader is entitled
2 to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule
3 8 does not require detailed factual allegations, it demands “more than labels and conclusions” or a
4 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
5 (*citing Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual
6 allegations contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
7 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
8 allegations, do not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the
9 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
10 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted by
11 lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro*
12 *se* pleadings is required after *Twombly* and *Iqbal*).

13 Plaintiff’s claims arise out of his dissatisfaction with his counsel in his on-going murder trial in state
14 court, and the rulings by that court denying various motions to end that representation. *See Docket No. 5*
15 at 2, 3. The relief Plaintiff seeks is “effective assistance of counsel, [sic] preferably through the state, and
16 not appointed by the Public Defender’s Office.” *Id.* at 9. In short, Plaintiff wants this Court to overrule
17 the state court’s orders. It is well settled that a federal district court does not have appellate jurisdiction
18 over a state court, whether by direct appeal, mandamus, or otherwise. *See, e.g., Rooker v. Fidelity Trust*
19 *Co.*, 263 U.S. 413 (1923); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003). Moreover, the United
20 States Supreme Court has long made clear that absent extraordinary circumstances, federal courts must not
21 interfere with pending state criminal prosecutions even when they raise issues of federal rights or interests.
22 *See, e.g., Younger v. Harris*, 401 U.S. 37, 44 (1971). A federal court must abstain under *Younger* if four
23 requirements are met:

24 (1) a state-initiated proceeding is ongoing; (2) the proceeding implicates important state
25 interests; (3) the federal plaintiff is not barred from litigating federal constitutional issues
26 in the state proceeding; and (4) the federal court action would enjoin the proceeding or have
the practical effect of doing so, *i.e.*, would interfere with the state proceeding in a way that
Younger disapproves.

27 *San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose*, 546 F.3d 1087,
28 1092 (9th Cir. 2008). Each of these requirements is met here.

For these reasons, Plaintiff has failed to state a claim upon which relief may be granted. Moreover, amendment would be futile. Accordingly, the undersigned **RECOMMENDS** that this case be **DISMISSED** without prejudice to Plaintiff seeking relief in state court.

Dated: August 28, 2017

Nancy J. Koppe
UNITED STATES MAGISTRATE JUDGE

NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).